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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,374	03/12/2004	Anthony Argila	ARGILA-CELL WEEP-240101	8878
4988	7590	04/12/2007		
ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712			EXAMINER CAJILIG, CHRISTINE T	
			ART UNIT	PAPER NUMBER
			3637	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/800,374

Applicant(s)

ARGILA, ANTHONY

Examiner

Christine T. Cajilig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9-17,19-30 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-17,19-30,40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment to claims 31-39 is non-compliant because the text of the cancelled claims is not deleted in its entirety.

Appropriate correction is required. See MPEP section 714 for proper format.

### ***Claim Objections***

Claim 11 is objected to because of the following informalities: Line 15 of the claim has a typographical error; "weep hollow channel" should read as "weep hole channel". Appropriate correction is required.

Claim 6 is objected to because of the following informalities: Line 3 of the claim has a spelling error; "crossection" should read as "cross section". Appropriate correction is required.

Claim 40 objected to because of the following informalities: Line 2 of the claim has a typographical error; "extended body" should read as "extending body". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The language of "A single wythe wall, consisting of" is deemed new matter and has not been originally claimed or disclosed. There is absent of indication in the specification that additional components would materially change the characteristics of Applicant's invention.

Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The language of "said...water-permeable body is in direct contact through mortar with said drainage weep hole channel in an underlying foundation wall" does not have written support in the original disclosure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13, 17, and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "said structural elements blocks" in the fourth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 17, the language of said upwardly extending water-permeable "body bodies extends into has a height" renders the scope of the claim to be indefinite. It appears that some phrases were not crossed out in lieu of the amendment.

Regarding claim 41, the language of "said...water-permeable body is in direct contact *through mortar*" is unclear. It is unclear if the water-permeable body is in direct contact with the drainage weep hole or if there is mortar in between the drainage weep hole and the water-permeable body.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-17, 19-30, and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sourlis (US 2004/0182037 A1), herein referred to as Sourlis '037 in view of Sourlis (US 5230189), herein referred to as Sourlis '189.

Regarding claims 1 and 22, Sourlis '037 discloses a device for protecting weep hole channels, draining water and directing mortar droppings/debris from a single wythe wall comprising said single wythe wall (14) composed of a plurality of structural masonry elements (16) having multiple courses (14-1, 14-2) including a bottom course (14-1),

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each masonry element forming at least one hollow inner cell (34), the bottom course of masonry elements having inner cells communicating through at least one drainage weep hole channel (28, 48) with the outside; a separate, upwardly extending water-permeable body (30) in each hollow recess cell in the bottom course masonry elements of said wall to permit water to pass through and prevent passage of mortar and other debris; each of said upwardly extending water-permeable bodies having a lower end (a) covering the drainage weep hole channel (28) and a transverse cross section which decreases upwardly from said lower end (a) to allow falling of the mortar and other debris in the respective inner hollow recess cells onto a surface around each of said upwardly extending water-permeable bodies but at the same time to prevent blockage of said drainage weep hole, whereby water in each of the inner cells of masonry blocks of the single wythe wall can flow through a respective one of said upwardly extending water-permeable bodies into the weep hole channel and outside of the single wythe wall, but does not disclose that the lower end of the water-permeable body substantially filling a cell area of the hollow recesses in which the water-permeable body is placed. However, Sourlis '189 discloses a mortar and debris collection device and system wherein a water-permeable body (24) has a lower end that is substantially filling a hollow recess area (16). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify Sourlis '037 to have the lower end of the water-permeable body substantially filling a cell area of the hollow recesses in which the water-permeable body is placed as taught by Sourlis '189

to properly block the weep hole openings from mortar and debris and to allow water to migrate through the water-permeable bodies to a drain outlet (Col 3, Ln 4-9).

Regarding claims 11 and 21, Sourlis '037 discloses a single wythe wall, consisting of a plurality of structural masonry elements (16) formed into rows (14-1, 14-2) with a bottom row (14-1), and subsequent rows placed over said bottom row, each structural element forming at least one inner hollow cell (34) in said bottom row communicating outside through at least one drainage weep hole channel (28); a separate device (30, Par 0042) for draining water from each said inner hollow cell in said bottom row having a plurality of passages such as to permit water to pass through said passages and to prevent passing of mortar and other debris through said passages; each device being an upwardly extending water-permeable body (30) having a transverse dimension section which decreases upwardly from a lower transverse cross section (a) in direct contact with the drainage weep hole channel, to allow and/or direct falling of the mortar and other debris onto a surface surrounding each upwardly extending water-permeable body but at the same time to prevent falling of mortar and other debris in the respective inner hollow recess cells into the drainage weep hole channel; whereby water in the inner hollow cells can flow through each said body into the drainage weep hole channel and outside of the single wythe wall, but does not disclose that the lower transverse cross section of the water-permeable body covers substantially all of the drainage weep hole channel and a bottom of said body filling substantially all of a cross section of the hollow cell. However, Sourlis '189 discloses a mortar and debris collection device and system wherein a water-permeable body (24)

has a lower transverse section that is covering substantially all of the drainage weep hole channel (22) and a bottom of said body filling substantially all of a cross section of a hollow cavity (16). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify Sourlis '037 to have the lower transverse cross section of the water-permeable body covering substantially all of the drainage weep hole channel and a bottom of said body filling substantially all of a cross section of the hollow cell as taught by Sourlis '189 to properly block the weep hole openings from mortar and debris and to allow water to migrate through the water-permeable bodies to a drain outlet (Col 3, Ln 4-9). Moreover, the method steps set forth in claim 21 would be an obvious method of draining a single wythe wall of the structure as claimed in claim 11.

Regarding claims 2 and 12, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies can have a pyramidal shape (Par 0042) which is tapered upwardly to increase the inner surface cell area for more room of each of said upwardly extending water-permeable bodies for collection of the mortar and other debris.

Regarding claims 3 and 13, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies can have a conical shape (Par 0042) which is tapered upwardly to increase the inner surface hollow cell area of each of said structural masonry elements for collection of the mortar and other debris.



Regarding claims 4 and 14, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said bodies can have a truncated pyramidal shape (Par 0042).

Regarding claims 5 and 15, Sourlis '037 already modified by Sourlis '189 discloses the structure as discussed above, but does not disclose that each of said upwardly extending water-permeable bodies has a truncated tapered conical shape. However, it would have been an obvious matter of design choice to modify the water-permeable body of Sourlis '037 already modified by Sourlis '189 to have a truncated tapered conical shape since such a modification would have involved a mere change in the shape of the components. A change in shape is generally recognized as being within the level of ordinary skill in the art absent persuasive evidence that the particular configuration of the claimed water-permeable device was significant. In addition, the shaped as claimed would act similar to the other tapered shapes of the water-permeable body. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Regarding claims 6 and 16, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above, but does not disclose that each of said upwardly extending water-permeable bodies includes a plurality of members of upwardly decreasing cross section. However, Sourlis '189 also disclose that a water permeable member can have a plurality of members of upwardly decreasing cross section (72a, 72b; Figure 10). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify the water-permeable body of Sourlis '037 already modified by Sourlis '189 to have a

plurality of members of upwardly decreasing cross section as taught by Sourlis '189 to yield protrusions that would help break up the mortar and other debris falling thereon.

Regarding claim 7, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies has a height sufficient to extend above the bottom course and into a next course as shown in Figure 1.

Regarding claims 9, 19 and 29, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said body is fibrous (Par 0042).

Regarding claims 10, 20, and 30, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said upwardly extending body is texturized (Par 0042).

Regarding claim 23, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies (30) further has an upper upwardly extending member for collection of the mortar and other debris.

Regarding claim 24, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said upwardly extending portion can be a block (Par. 0042).

Regarding claim 25, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said upwardly extending portion can be circular cylindrical (Par 0042).

Regarding claim 26, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said upwardly extending portion is a geometric shape in cross section.

Regarding claim 27, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies has a height, which exceeds a height of at least one of the structural elements.

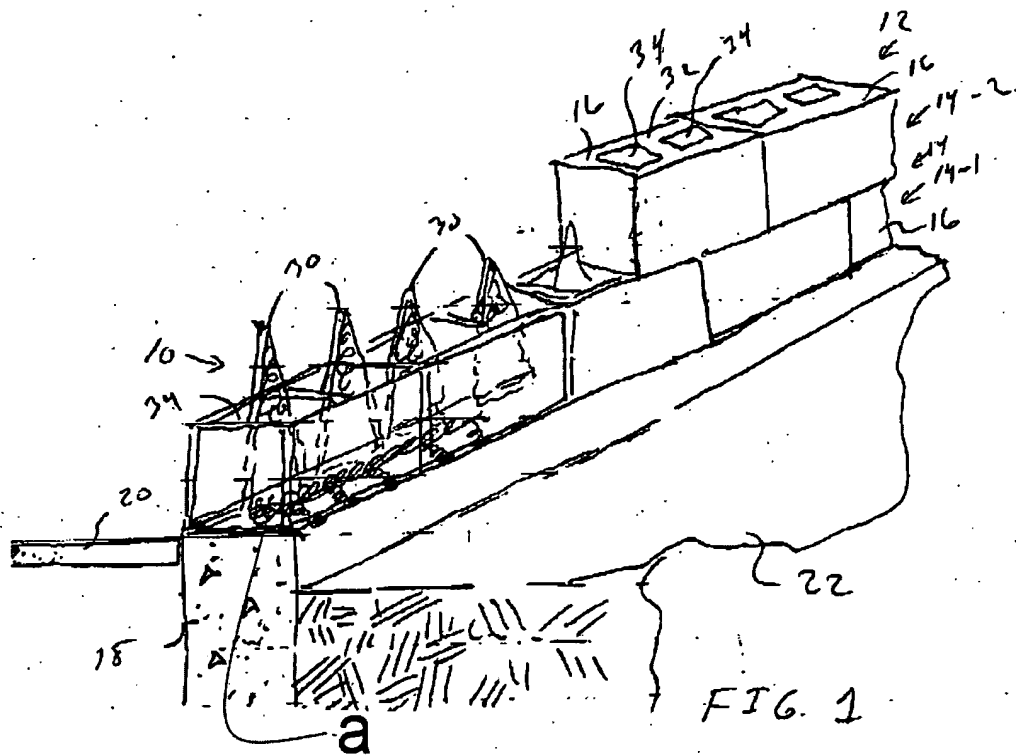
Regarding claim 28, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that the lower transverse cross section of each of said upwardly extending water-permeable bodies is selected so as to correspond to a transverse dimension of a lower end of a corresponding one of the inner hollow cells of the single wythe wall per the modification in claim 22.

Regarding claim 40, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that each said upwardly extended body extends into one or more structural elements above said lowermost structural elements.

Regarding claim 41, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that a bottom of the lower transverse cross section of said upwardly extending water-permeable body is in direct contact through mortar with said drainage weep hole channel in an underlying foundation wall.

Regarding claim 42, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that each said upwardly extending water-permeable body could be conical in shape (Par 0042).

Regarding claim 43, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that each said upwardly extending water-permeable body could have a truncated pyramidal shape (Par 0042).



Sourlis (US 2004/0182037 A1)

## Response to Arguments

Applicant's arguments with respect to claims 1 and 11 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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